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09/785,783	02/16/2001	Robert A. Foster	M-9381 US	3408
32605 7590 05/29/2009 Haynes and Boone, LLP IP Section 2323 Victory Avenue SUITE 700 Dallas, TX 75219				
EXAMINER				
GORT, ELAINE L				
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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* ROBERT A. FOSTER
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11 Appeal 2008-003920
12 Application 09/785,783
13 Technology Center 3600
14

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16 Decided:¹ May 29, 2009
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19 *Before:* MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU
20 R. MOHANTY, *Administrative Patent Judges.*

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22 CRAWFORD, *Administrative Patent Judge.*
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25 DECISION ON APPEAL

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27 STATEMENT OF THE CASE

¹The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1 to 38. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented a system and method for real-time pricing with volume discounting (Specification 1).

Claim 1 under appeal reads as follows:

1. A method for pricing transactions in real-time, the method comprising:
receiving a request for a real-time price quote for a transaction of a first account, the request being received at a first instance in time during a billing cycle;
determining a first production service, the first production service being a component of the transaction;
determining a count of first production service instances representing the first production service in the transaction;
determining a billable entity for the transaction, the billable entity comprising one or more related accounts, wherein the one or more related accounts includes the first account;
determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time, the total including the count of the first production service instances in the transaction;
determining a price applicable to the total of the first production service instances based on a pricing method; and
apportioning the price to the transaction based on the count of the first production service instances in the transaction.

The Examiner rejected claims 1 to 38 under 35 U.S.C. § 102(e) as being unpatentable over Halbert in view of Peterson.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Halbert	US 6,101,484	Aug. 8, 2000
Peterson	US 6,324,522 B2	Nov. 27, 2001

ISSUE

Has Appellant shown that the Examiner erred in finding that Halbert discloses the step of determining a first production service, the first production service being a component of the transaction and the step of determining a count of first production service instances?

FINDINGS OF FACT

Appellant's Specification discloses that production services are akin to a bill of materials for a manufacturer in that each transaction can be defined by the production services that are required to build or provide the transaction (Specification 34). Each financial transaction is defined in the data processing system in its component parts called production services (Specification 34). Production services for a financial transaction may include debit from an account, credit to an account, over draft approval, and computer connection (Specification 34). A production service instance is the representation in the data processing system of the actual occurrence of a specific production service performed by the financial services company.

Halbert discloses a method for pricing transactions in real time for purchasing a featured product through a buying co-op (col. 3, ll. 4 to 6; col. 4, ll. 25 to 28). The featured product may be any product, a product variant, or a service.

1 PRINCIPLES OF LAW

2 In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the
3 Examiner to establish a factual basis to support the legal conclusion of
4 obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

6 ANALYSIS

7 We will not sustain the rejection of the Examiner as it is directed to
8 claim 1 and claims 2 to 8 dependent thereon because there is no teaching or
9 suggestion in the cited prior art of determining a first production service
10 which is a component of the transaction or determining a count of first
11 production service instances. Appellant's Specification teaches that
12 production services are akin to a bill of materials for a manufacturer in that
13 each transaction can be defined by the production services that are required
14 to build or provide the transaction. The Specification on page 34 defines
15 production services as "the individual actions that the FSC performs or that
16 the FSC wishes to account for in performing or processing the financial
17 transaction." Thus, the production service must facilitate the transaction in
18 the data processing system. The language of claim 1 even requires that the
19 first production service is a component of the transaction. Halbert discloses
20 the sale through a co-op of products and services. There is no disclosure in
21 Halbert that components of the products or services is determined or
22 counted. In this regard contrary to the findings of the Examiner, our reading
23 of column 4, lines 25 to 29 of Halbert, is that a featured product can be
24 either a product or a service not that the service is a component of the
25 product.

We will likewise not sustain this rejection as it is directed to independent claims 9 and 26, and claims 10 to 25 and 27 to 38 dependent thereon, because these claims recite a transaction which comprises a number of production services.

CONCLUSION OF LAW

On the record before us, Appellant has shown that the Examiner erred in rejecting claims 1 to 38.

DECISION

The decision of the Examiner is reversed.

REVERSED

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